

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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*SILAS CALHOUN, et. al *
Plaintiffs * CIVIL ACTION
vs. * No. 04-10480-RGS
*
*UNITED STATES OF AMERICA *
Defendant *
* * * * *

BEFORE THE HONORABLE RICHARD G. STEARNS
UNITED STATES DISTRICT JUDGE
CIVIL BENCH TRIAL DAY 5
April 13, 2003

APPEARANCES:

SUGARMAN, ROGERS, BARSHAK & COHEN, (By Michael S.
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1 opinion is?

2 A Certainly.

3 My opinion is that while it's impossible to not
4 connect her early neonatal events to her current symptoms,
5 that there are better explanations and understandings that
6 are -- that point us in the direction of family and social
7 factors that are really leading to the current symptoms that
8 she's experiencing. And I can certainly give lots of
9 details about that --

10 Q Starting with the medical records, which you should have
11 in front of you -- and we may run into some places here
12 because the notebook that was sent out to you we've made
13 some additions to it, and when we get to those we will make
14 some changes.

15 But why don't you go ahead and begin and explain
16 for the Court the key components of your explanation and the
17 reasons and bases for your opinion?

18 A Sure. The basis of my opinion, first of all, is as
19 Estella Calhoun was followed really by Dr. du Plessis -- and
20 that's d-u space capital P-L-E-S-S-I-S -- she was followed
21 very closely by him shortly after her experience after her
22 birth. And really by the time that she was in March of '01,
23 Dr. du Plessis noted that developmentally, and this is from
24 his report, Estella is doing wonderfully. She's actually
25 advanced in and achieving developmental milestones.

1 deal of emotional distress because of the events that
2 followed Estella's birth. To begin with, I almost lost my
3 daughter twice in a matter of two weeks. I was told within
4 these two weeks that my daughter may not make it to the next
5 day and" --

6 (Reporter interrupts.)

7 THE WITNESS: I'm sorry.

8 A -- "and that she may be paralyzed through half of her
9 body.

10 "On top of that, my husband had to return to Korea
11 after Estella was discharged from Children's Hospital. I
12 was left alone with a sick newborn. Due to the event that
13 took place, I was never able to breast-feed Estella again,
14 even with multiple visits to a lactation specialist based
15 out of Beth Israel Deaconess Medical Center.

16 "I was nervous and anxious about breast-feeding due
17 to my fear that she would dehydrate again. I ended up
18 stressing for over a year for Estella. Estella had never
19 had a drop of formula."

20 She goes on, "I went through emotional stress with
21 my marriage. To this day, I do not understand how my
22 marriage survived this time of an emotional hell. I had
23 always been a calm person. After these events took place, I
24 became very anxious and worried about my daughter. I did
25 not leave her with anyone, not even my mother, until she was

1 father is anticipated to be redeployed.

2 So that these were factors that in the past Estella
3 appeared, in my opinion, to have strong reactions to, and
4 that are looming in the horizon for her once again.

5 And I think she's becoming more symptomatic or is
6 described as more symptomatic in those settings.

7 Q Now, you indicated earlier in starting to explain your
8 opinion that stressors early on, even though the child is
9 small and young, they pick up on this.

10 Now, could you explain a little bit for the Court
11 the basis for that conclusion that little kids, even
12 infants, even though they don't having cognitive abilities
13 or things like that, they pick up on these things.

14 A Certainly.

15 In the first year of life -- and in particular the
16 most important factors in an infant's development are really
17 bonding and attachment. And the bonds and attachments that
18 infants do or do not form with their parents have a lot to
19 do with really how they perceive and understand their
20 experiences afterwards.

21 So it's my perception reading the description of
22 the experience that Estella and Emily had together was a
23 very distressing, stressful time and there was a lot of
24 anxiety.

25 So it's my perception that, in fact, Estella

1 developed a lot of -- sort of an anxious type of attachment,
2 although that's not been formally evaluated, and that that
3 means she's very prone to stress. So that she may, in fact,
4 overreact to stress based on these difficult experiences and
5 have some troubles going forward, really, misperceiving
6 what's dangerous and what's not dangerous, and she me
7 overread dangerous situations.

8 Q And as a child becomes older, do they appreciate these
9 things more?

10 A Well, these things are really -- they're not brought
11 into so much awareness. It's just sort of the way we react.
12 So when we all think of ourselves, we're always the same
13 person. So we don't -- although there are many changes in
14 development, we always think of ourselves as the same person
15 across time. So that Estella may not be like other kids who
16 have difficult experiences, may not be aware that these
17 really influence how she perceives and experiences a
18 stressful situation.

19 Q Is there anything more, you know, pertinent to the -- I
20 was going to move on next to the recent records that have
21 come in, but from your fundamental opinion, is there
22 anything more in the record that you want to point to that
23 supports that opinion?

24 A I don't think so.

25 Q I turn your attention to the most -- there was some

1 Q And he says, and again that's in his report, and it's on
2 page 253.

3 A Yes, I'm here.

4 Q That Estella -- she has several behavioral issues
5 related to impulsivity, inattention, and hyperactivity that
6 are often seen in children with this history of neurological
7 history.

8 You don't disagree with Dr. Union, do you?

9 A In which statement?

10 Q In the statement in his summary. He is talking about
11 Estella.

12 A I would disagree with him in this particular instance.

13 In children who have neurological injury, we have
14 seen inattention, hyperactivity and impulsivity. So I agree
15 with that part of the statement.

16 Q You would not agree with the assertion that the kinds of
17 injuries that Estella suffered could never cause her
18 problems? You would not agree with that?

19 A I'm sorry. I don't understand the question.

20 Q Let's put it this way. Would you agree with the
21 statement that the kinds of injuries Estella suffered could
22 never cause her problems?

23 A No. I would not agree with that.

24 Q Correct.

25 Your opinion is that there are other, in your

1 opinion, more likely causes to Estella's problems?

2 A Yes.

3 Q Now, you happen to know Ed Hart, don't you?

4 A Yes.

5 Q In fact, he's a senior colleague of yours both at North
6 Shore Children's Hospital and at Massachusetts General
7 Hospital?

8 A He is.

9 Q And you know that among the many things he's done is
10 he's worked in the field of neurorehabilitation over the
11 years, correct?

12 A I understand that he worked at the Kennedy Krieger [ph.]
13 Institute, and he used to work at the Franciscan Children's
14 Hospital. I don't know the details of what he did there.

15 Q And you wouldn't disagree with his assertion that motor
16 deficits, for instance, do heal over time?

17 A I would -- I wasn't -- I'm not familiar with him making
18 that assertion, but --

19 Q You don't disagree with that as a general principle, do
20 you?

21 A Yes, because it would depend on the context of a motor
22 deficit, if a motor deficit --

23 Q I think -- let me ask you this. You're not a
24 neurologist and you're no expert in neurorehabilitation --

25 A I'm not a neurologist.